

**Wednesday, September 24, 2003**

The Board met at its offices at 450 N Street, Sacramento, at 9:45 a.m., with Ms. Migden, Chairwoman, Mr. Parrish, Vice Chairman, Mr. Leonard and Mr. Chiang present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

### **MEMBER COMMENT**

Mr. Leonard expressed his thanks to the Board Members and staff for their condolences, flowers and outreach for his recent loss of his father-in-law, Jule Boldizar.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

**Robert M. and Lois F. Ling, 133712**

1989, \$72,471 Tax, \$17,591.00 Late Filing

For Appellant:

R. Todd Luoma, Attorney

Robert M. Ling

For Franchise Tax Board:

Bruce Langston, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants have met their burden to prove error in the proposed assessment, or the federal action it is based on.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

**Robert W. Abbott, 208993**

1998, \$441.32 Assessment, \$1,317.00 Claim for Refund

For Appellant:

Robert W. Abbott

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether respondent properly assessed additional tax liability against appellant.  
Whether respondent abused its discretion by failing to abate interest.

Respondent's Exhibit: 1998 Form 1099-R (Exhibit 9.13)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

**Pradeep Batra, 192221**

2000, \$27,694.00 Claim for Refund

For Appellant:

Pradeep Batra

For Franchise Tax Board:

Ann Hodges, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether stock sold by appellant was "qualified small business stock," thereby entitling appellant to exclude 50 percent of the gain from gross income.

Appellant's Exhibit: Background Information (Exhibit 9.14)

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Respondent's Exhibit: Miscellaneous Documents (Exhibit 9.15)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

**Hunt Systems, LLC, 205261**

2001, \$907.57 Claim for Refund

For Appellant: Woody Hunt, President

For Franchise Tax Board: Dennis Haase, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant is liable for the \$800 limited liability company minimum tax for Year Ended December 31, 2001.

Whether appellant has shown that it should be refunded a late payment penalty and interest.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

**SALES AND USE TAX APPEALS HEARINGS**

Chairwoman Migden requested that when Ms. Pellegrini announces the next case, to also announce the case following to ensure the taxpayer(s) is provided sufficient forewarning that their case will soon be heard by the Board.

**Lezah Jazzmens, Inc., 167420**

1-1-98 to 12-31-00, \$63,630.64 Tax, \$6,363.08 Negligence Penalty

For Petitioner: Hazel B. Simms, President/CEO  
Charles E. Simms

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the evidence shows that the amount of audited taxable sales is excessive.

Whether the evidence supports an adjustment for cash discounts.

Whether the evidence supports an additional adjustment for bad debts.

Whether the negligence penalty was properly applied.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Chairwoman Migden requested that when staff have revisions or updates to recommendations, reports or other materials presented to the Board that the revisions or updates be provided in writing as soon as possible, before the Board meeting. Oral revisions or updates are not acceptable.

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Michael Wayne Austin, et al., 135313, 88432

1-1-97 to 1-8-98, \$2,371.00 Tax, \$237.10 Negligence and \$237.10 Finality Penalties

For Petitioner: Michael Wayne Austin

For Sales and Use Tax Department: Trecia Nienow, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether taxpayers have presented sufficient evidence to establish that the claimed amount of prepaid sales tax paid to a certain vendor is correct.  
Whether taxpayers put the Board on notice of the incorporation of the partnership and transfer of taxpayers' business to the corporation.

Whether the Board properly issued the notices of dual determination to taxpayers.

Whether relief from the penalty for failure to timely pay the determination (finality penalty) is warranted.

Whether the negligence penalty was properly applied.

Whether claimants have established a basis for the Board to grant their refund claim.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Kassabian Motors, Inc., 87623

1-1-97 to 12-31-99, \$2,874.69 Tax

For Petitioner: Brad Kassabian, Petitioner

For Sales and Use Tax Department: John Abbott, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the Department properly disallowed a portion of petitioner's claimed interstate commerce vehicle sales.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Applied Process Cooling Corp., 113320

10-1-96 to 9-30-99, \$69,114.32 Claim for Refund

For Claimant: Clive T. Grimbly, CPA

Colleen A. Meenk, CPA

Gary Dunn, President

For Sales and Use Tax Department: Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether claimant was the consumer of materials and the retailer of fixtures it furnished and installed pursuant to the construction contract, or instead sold this property for resale.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

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Amtek Computer Services, Inc., 128567

10-1-97 to 9-30-00, \$28,172.05 Tax

For Claimant:

Alan Gibson, Representative

For Sales and Use Tax Department:

Robert D. Tucker, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether use tax is due measured by the purchase price of two aircraft rather than the fair rental value.

Whether the evidence established that petitioner received and relied upon erroneous written advice.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**PROPERTY TAXES HEARINGS**

MPower Communications Corporation (7724), 221745

1999, (\$18,900,000.00) Escaped (Excessive) Assessment

2000, (\$10,000,000.00) Escaped (Excessive) Assessment

2001, \$16,900,000.00 Escaped (Excessive) Assessment, \$1,690,000.00 Penalty Per Section 862, \$2,535,000.00 Assessment in Lieu of Interest

2002, \$16,100,000.00 Escaped (Excessive) Assessment

For Petitioner:

Peter Hladek, Representative

Chris Zamora, Representative

Laurie McDonough, Director of Tax

Amy Frees, Representative

For Property and Special Taxes Department: Anthony Epolite, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether it is proper to abate the 10 percent penalty of \$1,690,000 assessed by the Board pursuant to Revenue and Taxation Code section 862, relating to the 2001 escape assessment.

Whether the Board should waive the \$2,535,000 amount in lieu of interest required by subsection (a) of section 864 of the Revenue and Taxation Code, added to the 2001 escape assessment, in the absence of "an error, other than an erroneous opinion of value, on the part of the Board" as required by the statute.

Whether collocation costs expended by the Petitioner for the housing of central office equipment located at local exchange central offices have lives parallel to the central office equipment to which such improvements are associated.

Whether connection costs to the local exchange's system are subject to assessment.

Whether property is owned by the Petitioner and subject to assessment as construction work in progress.

Whether \$13,963,642 of switching equipment costs for 2001 were improperly assessed because such costs included exempt application software.

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Whether the \$16,078,726 increase in the assessment of 2002 taxable property is proper, in light of the write-down of the Petitioner's asset values and information previously supplied to Board staff.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be submitted for decision.

Chairwoman Migden inquired if the Board Proceedings Division had sent a copy of the Property Tax Division's revised recommendation to the taxpayer before the hearing.

Chairwoman Migden requested when Ms. Pellegrini announces constitutional function cases (Deputy Controller cannot participate) to include this fact when announcing the case.

**TCAST Communications, Corporation (7625), 214613**

1999, \$58,000.00 Escaped Assessment, \$5,800.00 Penalty Per Section 862, \$19,140.00

Assessment in Lieu of Interest Section 864

2000, \$141,000.00 Escaped Assessment, \$14,100.00 Penalty Per Section 862, \$33,840.00

Assessment in Lieu of Interest Section 864

2001, \$1,420,000.00 Escaped Assessment, \$142,000.00 Penalty Per Section 862, \$213,000.00

Assessment in Lieu of Interest Section 864

2002, \$280,000.00 Escaped Assessment, \$28,000.00 Penalty Per Section 862, \$16,800.00

Assessment in Lieu of Interest Section 864

For Petitioner: Andrew Grey, CPA

For Property and Special Taxes Department: Paul Steinberg, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the amount of sales tax added to the switch was properly assessed.

Whether the "market cost" of the installation for the switch was properly assessed.

Whether connection costs to the local exchange's system are subject to assessment.

Whether the 10 percent penalty assessed by the Board pursuant to Revenue and Taxation Code section 862 should be abated.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be submitted for decision.

The Board recessed at 12:10 p.m. and reconvened at 1:00 p.m. with Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang present.

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**PROPERTY TAXES HEARINGS**

PacWest Telecomm (2043), 224022

2003, \$92,300,000.00 Unitary Value

For Petitioner:

John Corum, Representative  
Peggy McGaw, Executive Director of  
Accounting & Finance  
Tamara Rudd, Director of Tax

For Property and Special Taxes Department:

Lou Ambrose, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether Board staff developed Replacement Cost valuation factors in  
accordance with Board guidelines.

Whether the Board failed to apply Property Tax Rule 6(e) in the calculation of  
the Replacement Cost New Less Depreciation indicator of value.

Whether the Board is assessing intangible property to the Petitioner in violation  
of Revenue and Taxation Code section 110, subdivision (d)(1).

Whether the Board's unitary assessment exceeds fair market value.

Whether the Board improperly relied upon Statement of Financial Accounting  
Standards (FAS) Number 144 to determine extraordinary obsolescence.

Whether the Board failed to assess similarly situated properties in a similar  
manner thereby violating Petitioner's right to equal protection.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish,  
Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with  
Government Code section 7.9, the Board ordered that the petition be submitted for decision.

SBC ASI (7885), 222966

2003, \$479,900,000.00 Unitary Value, \$20,000,000.00 Penalty

For Petitioner:

No Appearance

For Property and Special Taxes Department:

Anthony Epolite, Tax Counsel

Action: The Board took no action.

**PUBLIC HEARING****Adoption of Proposed Sales and Use Tax Regulation 1598.1, Diesel Fuel  
Prepayment Exemption**

Janice Thurston, Assistant Chief Counsel, Business Tax Division, Legal  
Department, made introductory remarks regarding the Proposed *Regulation 1598.1, Diesel  
Fuel Prepayment Exemption*, which is proposed to be promulgated to interpret, implement and  
make specific Revenue and Taxation Code section 6480.3. The regulation is proposed to define  
terms used in Senate Bill (SB) 1901; clarify criteria under which a seller of diesel fuel may accept  
a diesel fuel prepayment exemption certificate; provide guidelines on the form of a diesel fuel  
prepayment exemption certificate; clarify a retailer's liability for tax when the diesel fuel is  
resold; and, explain the penalties for misuse of a diesel fuel prepayment exemption.

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Speakers: Speakers were invited to address the Board, but there were none.

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted *Sales and Use Tax Regulation 1598.1, Diesel Fuel Prepayment Exemption*, as published (Exhibit 9.16).

### **LEGAL APPEALS MATTERS, ADJUDICATORY**

Seiniger Advertising Inc., 41251

7-1-98 to 9-30-98, \$531,706.82 Tax, \$00.00 Penalty

Considered by the Board: June 9, 2003

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish not participating, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY**

Sonia Gregerson, 115484

1997, \$116.00 Assessment

Considered by the Board: June 10, 2003

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Migden, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted a decision reversing the action of the Franchise Tax Board, granting the appellant equitable innocent spouse relief from the liabilities.

Wendy K. Mascorro, 143533

1991, \$1,352.00 Tax, \$338.00 Notice and Demand Penalty, \$335.00 Late Filing Penalty

1992, \$121.00 Tax, \$30.25 Notice and Demand Penalty, \$100.00 Late Filing Penalty

1994, \$270.00 Tax, \$67.50 Notice and Demand Penalty, \$100.00 Late Filing Penalty

Considered by the Board: May 6, 2003

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Migden, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted a decision reversing the action of the Franchise Tax Board, granting the appellant equitable innocent spouse relief from the liabilities.

Hernan A. Jacobo, 172837

1999, \$1,705.00 Tax, \$426.25 Notice and Demand Penalty, \$426.25 Late Filing Penalty

Considered by the Board: August 6, 2003

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

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Action: Upon motion of Ms. Migden, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

**Robert A. Lelito, 187221**

1993, \$39,970.22 Claim for Refund

Considered by the Board: June 11, 2003

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted a decision denying the petition for rehearing.

Mr. Parrish moved to directed staff to send a letter to the California Victim Compensation and Government Claims Board recommending favorable consideration of the request for relief filed by the taxpayer. The motion was seconded by Mr. Chiang but failed to carry, Mr. Parrish and Mr. Chiang voting yes, Ms. Migden and Mr. Leonard voting no, Ms. Mandel not participating.

#### **HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, ADJUDICATORY**

**Rick Jenkins, 193298**

2000, \$600.00 Claim for Credit

Considered by the Board: June 10, 2003

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

#### **SALES AND USE TAX MATTERS, REDETERMINATIONS, ADJUDICATORY**

**Reebok International Ltd., 168214**

10-1-96 to 12-31-99, \$634,081.73

Considered by the Board: August 6, 2003

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and duly carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden voting no, the Board approved the redetermination as recommended by staff.

#### **SALES AND USE TAX MATTERS, REFUNDS, ADJUDICATORY**

**Regents of the University of California, 92868**

1-1-97 to 3-31-01, \$630,627.31

Considered by the Board: August 6, 2003

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.



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Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

**Siemens Info & Commctn Mobile LLC, 87589**

1-1-99 to 12-31-01, \$87,313.74

Considered by the Board: August 6, 2003

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

### **LEGAL APPEALS MATTERS, CONSENT**

The Board deferred consideration of the following matter: *Larry's Auto Sales, Inc., 164577.*

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 on *New York Life Insurance Company, 17609, 17610, 17611*, the Board made the following orders:

**Brynnco, Inc., 40886, 83788**

7-1-96 to 3-31-97, \$6,140.73 Tax, \$00.00 Negligence Penalty

4-1-97 to 9-30-97, \$5,092.66 Tax, \$00.00 Negligence Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

**Gary Fisher and Terry Edwards, 89002181700**

10-1-93 to 6-30-96, \$77,363.65 Tax, \$00.00 Negligence Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

**Michael P. and Kristy S. Shelley, 17161**

1-1-95 to 6-30-98, \$175,821.43 Tax, \$12,030.53 Negligence Penalty

Action: Deny the petition for rehearing and redetermine as recommended by the Appeals Division.

**Larry's Auto Sales, Inc., 164577**

4-1-98 to 3-31-00, \$5,858.54 Tax, \$1,002.52 Negligence Penalty

Action: The Board deferred consideration of this matter.

**First Portland Corporation, 171098**

7-1-95 to 9-30-00, \$28,903.54 Tax

Action: Redetermine as recommended by the Appeals Division.

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Kambiz Pahlavan, 143941

4-1-99 to 6-30-99, \$00.00 Tax, \$00.00 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Fence Builders, Inc., 129292

1-1-95 to 12-31-97, \$00.00 Tax, \$00.00 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Pacific Office Group, Inc., 142706

CAL PAC, LLC, 143467

1-1-97 to 1-7-99, \$66,060.00 Claim for Refund

1-8-99 to 12-31-99, \$2,603.00 Claim for Refund

Action: Redetermine as recommended by the Appeals Division.

New York Life Insurance Company, 17609, 17610, 17611

1994, \$517,040.00 Claim for Refund

1995, \$2,720,681.00 Claim for Refund

1996, \$2,009,752.00 Claim for Refund

Action: Redetermine as recommended by the Appeals Division. Ms. Mandel not participating in accordance with Government Code section 7.9.

Yassin Al Rubai, 222955

May 28, 2003 Notice of Seizure and Forfeiture

Action: Determined the staff properly seized the cigarettes.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT**

The Board deferred consideration of the following matters: *Douglas and Janine Leishear, 205946*; and *Murray Stein, 203452*.

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

David Andrew Allen, 183720

1999, \$1,056.00 Tax, \$264.00 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

Delois Allen, 195790

1995, \$388.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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**Jaymes W. Barnes, 203372**

1998, \$300.67 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Angel R. Bedrillana, 188083**

1994, \$1.00 or more Tax

Action: Sustain the action of the Franchise Tax Board.

**James Bohnenstiehl, 202285**

1999, \$1,215.00 Tax, \$303.75 Failure to Furnish Information Penalty

Action: Modify the action of the Franchise Tax Board.

**Randell and Debbie Brenner, 194708**

1997, \$1,222.00 Tax

Action: Sustain the action of the Franchise Tax Board.

**Philip D. and Shirley Brent, 186402**

1997, \$3,892.80 Assessment

Action: Modify the action of the Franchise Tax Board.

**Claire Bruno, 195785**

1999, \$1.00 or more Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**Ari Castano, 184844**

1998, \$945.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Larry Chapin, 203447**

2000, \$1,148.00 Tax, \$287.00 Failure to Furnish Information Penalty

Action: Modify the action of the Franchise Tax Board.

**Donald W. Collins, 195437**

1998, \$5,296.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Christopher Cortez, 207815**

1999, \$813.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Creative Imaginations, Inc., 195328**

2001, \$517.61 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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CSN&amp;Y, Inc., 203284

2000, \$7,848.00 or more Assessment

Action: The Board dismissed for lack of jurisdiction.

Lewis Erhart, 205245

1999, \$2,968.95 Assessment

Action: Sustain the action of the Franchise Tax Board.

Kyndal Hays, 203454

2000, \$675.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Paul S. Heichman, 196907

1995, \$59,00 Claim for Refund

1996, \$1,029.16 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Kathy Nicholson Hull, 195665

1996, \$15,750.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Allan Jones, 195674

2001, \$289.00 Assessment

Action: Reverse the action of the Franchise Tax Board.

David L. Josephson, 205927

1997, \$522.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Debbie N. Ushiroda, 197788

Jo-Anne Kobayashi, 201816

2000, \$197,329.00 Claim for Refund

1999, \$5,877.00 Assessment

2000, \$14,388.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Douglas and Janine Leishear, 205946

1992, \$388.65 Assessment

Action: The Board deferred consideration of this matter.

James August Makau, 206951

1999, \$955.99 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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**Clayton and Kathleen Marr, 203176**

1997, \$30,449.00 Assessment

1998, \$6,996.00 Assessment

1999, \$2,812.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Lillie M. McQuarter, 216973**

2001, \$1,313.40 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Bobbie J. Mulholland, 210244**

1999, \$737.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Carolina Padilla, 202129**

1998, \$456.00 Assessment

Action: Modify the action of the Franchise Tax Board.

**Meliton Salva, 202280**

1998, \$84.27 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Jason Seno, 195041**

2001, \$508.80 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Pouran Siani, 206165**

2000, \$354.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Mark D. Soto, 188244**

1988, \$4,303.87 Claim for Refund

1989, \$830.74 Claim for Refund

1990, \$302.74 Claim for Refund

1991, \$180.54 Claim for Refund

1992, \$125.00 Claim for Refund

1993, \$34.06 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**Joseph Sparacino, 196908**

1995, \$10,923.97 Claim for Refund

1996, \$6,448.54 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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**Joan C. Stanwyck, 174143**

1994, \$229,191.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Murray Stein, 203452**

1990, \$8,864.61 Claim for Refund

Action: The Board took no action.

**Adrian Watts, 195158**

2001, \$1.00 or more Assessment

Action: Sustain the action of the Franchise Tax Board.

**Shaukat H. and Shamtm Zaidi, 186966**

1998, \$2,265.00 Assessment

1999, \$3,321.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**James N. Harger, 171249**

1997, \$3,535.00 Assessment

1998, \$3,587.00 Assessment

Action: Deny the petition for rehearing.

**Laura Hass, 173223**

1982, \$524.21 Claim for Refund

1987, \$914.89 Claim for Refund

1988, \$1,432.13 Claim for Refund

1989, \$2,472.75 Claim for Refund

1990, \$59,916.49 Claim for Refund

1991, \$3,224.91 Claim for Refund

1992, \$2,072.42 Claim for Refund

Action: Modify the Board's decision of May 6, 2003 and deny the petition for rehearing.

**Ladislaus L. Braun Trust, 181673**

1999, \$39,480.36 Claim for Refund

Action: Deny the petition for rehearing.

**John Laszloffy, 181677**

1999, \$3,063.00 Tax, \$765.75 Late Filing Penalty

Action: Deny the petition for rehearing.

**Andres Munoz, 181463**

1999, \$725.00 Assessment

Action: Deny the petition for rehearing.

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John J. and Angela O'Brien, 173481

1999, \$23,312.57 Claim for Refund

Action: Modify the Board's decision of May 6, 2003 and deny the petition for rehearing.

Colette Penchina (Deceased), 172131

Claude and Meira Penchina, 172132

1995, \$600.00 Claim for Refund

1995, \$783.00 Claim for Refund

Action: Deny the petition for rehearing.

William D. Tyler, 172934

1996, \$759.79 Claim for Refund

Action: Deny the petition for rehearing.

**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT**

The Board deferred consideration of the following matter: *Lorraine C. Bryant*, 202289.

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

Willie Alexander, 193943

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

John D. Belcher, 193940

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Mary Brady, 206498

1999, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Tricia Brotherton, 209619

2002, \$282.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Lorraine C. Bryant, 202289

2002, \$1.00 or more Claim for Credit

Action: The Board took no action.

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Margaret Y. Burnett, 193462

2002, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Thong Chanthaphone, 206963

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Mary Coles, 193450

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Chan A. Dan, 193942

2002, \$345.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Lori Davis, 196113

2002, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

James E. DeLonge, 201698

2002, \$341.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Kimberly Dougherty, 208912

2002, \$312.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Paciencia Galima, 207695

2002, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Tina Louise Garman, 208278

2002, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Dexter Glover, 207134

2001, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Robert Hall, 197595

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.



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**Eugene Henry, 207692**

1999, \$340.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**P. A. Hunt, 208285**

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Kay Kuhlenbeck, 212485**

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Juanita Landry, 212519**

2002, \$374.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Shirley Mannery, 198658**

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Billy L. Olson, 214261**

2002, \$372.00 Claim for Credit

Action: Sustain the action with concession by the Franchise Tax Board.

**Peaches D. Parker, 214299**

2002, \$360.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Bennie Rainwater Shaw, 206959**

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Michael Shedd-James, 204104**

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Joe J. Soldevila, 203093**

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Myrna Vallejo, 214612**

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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Phill Williams, 198993

2002, \$347.50 Claim for Credit

Action: Reverse the action of the Franchise Tax Board.

Beba Zaslavskaya, 209816

2002, \$1.00 or more Claim for Credit

Action: Modify the action of the Franchise Tax Board.

Maxine McIntosh, 194147

2002, \$1.00 or more Claim for Credit

Action: Deny the petition for rehearing.

**SALES AND USE TAX MATTERS, REDETERMINATIONS AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Migden, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish and Ms. Mandel not participating in *General Electric Company*, 236013, in accordance with Government Code section 87105, Ms. Mandel not participating in *IBM Credit Corporation*, 235828, in accordance with Government Code section 87105, the Board made the following orders:

Performance Trailer, Inc., 157321

4-1-98 to 12-31-00, \$80,388.60

Action: Approve the redetermination as recommended by staff.

Computer Sales Intn'l, Inc., 158229

1-1-97 to 6-30-00, \$70,961.51

Action: Approve the redetermination as recommended by staff.

Intertel Technologies, Inc., 93428

7-1-96 to 6-30-99, \$1,346,215.84

Action: Approve the redetermination as recommended by staff.

Ericsson Components, Inc., 182962

7-1-95 to 12-31-98, \$126,439.02

Action: Approve the redetermination as recommended by staff.

Pilot Oil Corporation, 216192

7-1-00 to 9-30-00, \$218,894.00

Action: Approve the redetermination as recommended by staff.

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**Pilot Oil Corporation, 216194**

4-1-00 to 6-30-00, \$214,112.00

Action: Approve the redetermination as recommended by staff.

**Alberto Tolot Corporation, 129833**

1-1-92 to 6-30-00, \$69,673.79

Action: Approve the redetermination as recommended by staff.

**Francisco Escorcia Perez, 151315**

9-15-94 to 3-31-00, \$23,677.62

Action: Approve the redetermination as recommended by staff.

**Newedit, Inc., 203820**

1-1-99 to 12-31-01, \$754,440.53

Action: Approve the redetermination as recommended by staff.

**Fresh Express Inc., 235805**

1-1-97 to 12-31-99, \$97,210.82

Action: Approve the denial of claim for refund as recommended by staff.

**Simon & Schuster, Inc., 160668**

7-1-99 to 9-30-00, \$93,791.23

Action: Approve the denial of claim for refund as recommended by staff.

**IBM Credit Corporation, 235828**

10-1-97 to 12-31-00, \$1,168,148.90

Action: Approve the denial of claim for refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

**Check Solutions Company, 153299**

10-1-98 to 12-31-00, \$110,946.11

Action: Approve the denial of claim for refund as recommended by staff.

**European Health Concepts, Inc., 203313**

1-1-02 to 8-30-02, \$103,323.00

Action: Approve the denial of claim for refund as recommended by staff.

**General Electric Company, 236013**

4-1-93 to 6-30-97, \$4,079,846.78

Action: Approve the denial of claim for refund as recommended by staff. Mr. Parrish and Ms. Mandel not participating in accordance with Government Code section 87105.

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CCW&amp;D, Inc., 187587

7-1-99 to 6-30-02, \$50,000.00

Action: Approve the denial of claim for refund as recommended by staff.

**SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT**

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Migden, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish and Ms. Mandel not participating in *Genentech, Inc., 192035*; and *General Electric Company, 89002085730*, in accordance with Government Code section 87105, Ms. Mandel not participating in *Wells Fargo Bank, 234439*; and *Circuit City Stores Wst Cst, Inc., 213331*, in accordance with Government Code section 87105, the Board made the following orders:

Wells Fargo Bank, 234439

1-1-95 to 9-30-98, \$293,296.13

Action: Approve the credit and cancellation as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

CGII San Francisco Holdings, Inc., 235812

7-1-00 to 6-1-01, \$97,791.29

Action: Approve the credit and cancellation as recommended by staff.

Fast Industries Limited, 207938

7-6-99 to 12-31-00, \$67,622.11

Action: Approve the credit and cancellation as recommended by staff.

Andresen Color San Francisco, Inc., 235125

4-1-99 to 6-30-02, \$74,075.55

Action: Approve the credit and cancellation as recommended by staff.

Arvato Services, Inc., 216098

7-1-97 to 6-30-99, \$112,593.18

Action: Approve the refund as recommended by staff.

Midway Hospital Medical Center, 225094

7-1-99 to 6-30-02, \$53,673.28

Action: Approve the refund as recommended by staff.

Long Beach School Employees FCU, 128295

4-1-98 to 3-31-01, \$75,439.44

Action: Approve the refund as recommended by staff.

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**Hardy Media, 234539**

10-1-99 to 12-31-02, \$62,602.50

Action: Approve the refund as recommended by staff.

**Fresh Express Incorporated, 63153**

1-1-97 to 12-31-99, \$66,584.42

Action: Approve the refund as recommended by staff.

**Pharmacy Corporation of America, 50453**

4-1-95 to 12-31-00, \$1,030,241.82

Action: Approve the refund as recommended by staff.

**Marukin Corporation, 157154**

7-1-99 to 6-30-02, \$106,608.61

Action: Approve the refund as recommended by staff.

**Genentech, Inc., 192035**

1-1-98 to 6-30-02, \$159,476.19

Action: Approve the refund as recommended by staff. Mr. Parrish and Ms. Mandel not participating in accordance with Government Code section 87105.

**Evans & O'Brien, Inc., 225237**

7-1-99 to 6-30-02, \$68,257.80

Action: Approve the refund as recommended by staff.

**Loma Linda Mercantile, 51647**

7-1-97 to 12-31-02, \$3,363,749.88

Action: Approve the refund as recommended by staff.

**Lambesis, Inc., 201888**

1-1-00 to 9-30-02, \$255,339.05

Action: Approve the refund as recommended by staff.

**IKOS Systems, Inc., 157136**

7-1-01 to 9-30-01, \$112,091.16

Action: Approve the refund as recommended by staff.

**Jeld Wen, Inc., 79058**

7-1-97 to 6-30-00, \$216,654.50

Action: Approve the refund as recommended by staff.

**Hertzberg-New Method, Inc., 212949**

4-1-02 to 6-30-02, \$260,349.25

Action: Approve the refund as recommended by staff.

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Mead Johnson &amp; Company, 234100

10-1-97 to 6-30-02, \$1,158,462.03

Action: Approve the refund as recommended by staff.

Sud-Chemie, Inc., 208347

10-1-99 to 6-30-00, \$95,104.25

Action: Approve the refund as recommended by staff.

IBM Credit Corporation, 103258

10-1-97 to 6-30-02, \$1,743,784.31

Action: Approve the refund as recommended by staff.

Ford Motor Company, 224726

2-1-03 to 4-30-03, \$484,994.67

Action: Approve the refund as recommended by staff.

Louisiana-Pacific Samoa, Inc., 216177

10-1-02 to 12-31-02, \$81,033.45

Action: Approve the refund as recommended by staff.

AP/APH Palm Springs, L.P., 196275

1-1-02 to 3-31-03, \$72,859.71

Action: Approve the refund as recommended by staff.

AP/APH Palm Springs, L.P., 225274

1-1-99 to 9-30-02, \$291,801.49

Action: Approve the refund as recommended by staff.

Rose Gene Technology L.L.C., 235003

1-1-00 to 12-31-02, \$118,482.45

Action: Approve the refund as recommended by staff.

California Newspapers LP, 190677

7-1-00 to 3-31-01, \$60,935.48

Action: Approve the refund as recommended by staff.

West Coast Medianews LLC, 190680

7-1-00 to 3-31-02, \$271,856.64

Action: Approve the refund as recommended by staff.

TVN Shopping, Inc., 202976

7-1-00 to 8-31-00, \$58,363.35

Action: Approve the refund as recommended by staff.

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CJ-7 Resources, Inc., 235808

10-1-02 to 12-31-02, \$59,820.74

Action: Approve the refund as recommended by staff.

General Electric Company, 89002085730

4-1-93 to 6-30-97, \$266,718.06

Action: Approve the refund as recommended by staff. Mr. Parrish and Ms. Mandel not participating in accordance with Government Code section 87105.

American Honda Motor Co., Inc., 234533

7-1-99 to 9-30-99, \$355,059.66

Action: Approve the refund as recommended by staff.

Circuit City Stores Wst Cst, Inc., 213331

4-1-01 to 6-30-01, \$485,803.57

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Wescom Credit Union, 230780

10-1-02 to 3-31-03, \$124,480.24

Action: Approve the refund as recommended by staff.

Applied Graphics Technologies, Inc., 89002431780

4-17-96 to 12-31-01, \$1,665,342.23

Action: Approve the refund as recommended by staff.

Robertson Stephens, Inc., 203149

1-1-99 to 3-31-02, \$117,899.13

Action: Approve the refund as recommended by staff.

Xcellenet, Inc., 216158

2-1-00 to 12-31-02, \$59,557.19

Action: Approve the refund as recommended by staff.

Electronic Innovations, Inc., 225185

1-1-99 to 12-31-01, \$51,352.99

Action: Approve the refund as recommended by staff.

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**SPECIAL TAXES MATTERS, REFUNDS, CONSENT**

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon a single motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 on *Tesoro Refining and Marketing Co, 188798*, and *Old Republic Insurance Company, 215246*, the Board made the following orders:

Tesoro Refining and Marketing Co, 188798

2-1-00 to 5-31-01, \$77,407.31

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Tesoro Refining and Marketing Co., 196077

5-1-02 to 5-31-02, \$193,252.50

Action: Approve the refund as recommended by staff.

Old Republic Insurance Company, 215246

1-1-01 to 12-31-01, \$887,236.51

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**PROPERTY TAX MATTERS, CONSENT**

With respect to the Property Taxes Matter, Consent Agenda, upon a single motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

***Petitions for Reassessment of 2003 Unitary Value***

Pacific Gas & Electric Company, 224005

2003, \$13,320,900,000.00 Value

Action: Deny the petition for reassessment of 2003 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

OmniPoint Communications, Inc., 224753

2003, \$125,500,000.00 Value

Action: Reduce the 2003 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.



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***Petition for Penalty Abatement on 2003 Unitary Value***

OpenTel Communications, Inc., 221748

2003, \$429,000.00 Value, \$42,900.00 Penalty

Action: Grant the petition for penalty abatement on 2003 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Direct One, Inc., 221747

2003, \$45,6000.00 Value, \$4,560.00 Penalty

Action: Grant the petition for penalty abatement on 2003 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

***Petitions for Reassessment of 2003 Private Railroad Car Tax***

General Electric Rail Services, 235104

2003, \$21,884,6003.00 Value

Action: Grant the petition for reassessment of private railroad car tax as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Railcar Associates, Inc., 235105

2003, \$3,630,182.00 Value

Action: Grant the petition for reassessment of private railroad car tax as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

***Petitions for Penalty Abatement on 2003 Unitary Escape Assessment***

RCN Telecom Services, Inc., 225291

2003, \$20,931,700.00 Value, \$2,268,500.00 Penalty, \$3,339,390.00 Interest

Action: Deny the petition for penalty abatement on 2003 unitary escape assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**PROPERTY TAX MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**

With respect to the Property Taxes Matters Not Subject to Contributions Disclosure Statute Agenda, upon a single motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

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***Unitary Escaped Assessments***

Virgin Mobile USA, LLC (2767)

2003, \$4,750,000.00 Value, \$475,000.00 Penalty

Action: Adopt unitary escaped assessment and late-filing penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

***Unitary Land Escaped Assessments***

Radio Electronics Products Corporation (3374)

2003, \$103,732.00 Value

Action: Adopt unitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

***Private Railroad Car Tax Refund Request***

JAIX Leasing Company (6209)

2002, \$315.61 Refund

Action: Approve private railroad car tax refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

***Board Roll Changes***

2003 Board Roll of State-Assessed Property

Action: Approve Roll Correction Batch Rosters 03-01, 03-02, and 03-03 to the 2003 Board Roll of State-Assessed Property (Exhibit 9.17).

**CHIEF COUNSEL MATTERS**

**RULEMAKING**

**Request for Authorization to Publish Property Tax Rule 136, Limited Liability Companies as Qualifying Organizations for the Welfare Exemption**

Kristine Cazadd, Assistant Chief Counsel, Property Taxes Division, Legal Department, made introductory remarks regarding the request for authorization to publish *Property Tax Rule 136, Limited Liability Companies as Qualifying Organizations for the Welfare Exemption*, and approval of corresponding suggested legislation (Exhibit 9.18).

Mr. Leonard moved to authorized the publication of *Property Tax Rule 136, Limited Liability Companies as Qualifying Organizations for the Welfare Exemption*, and delete the corresponding suggested legislation. The motion was seconded by Mr. Parrish but no vote was taken.

The Board deferred consideration of this matter to the October 15, 2003 Board meeting.

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## PROPERTY TAX MATTER

### Board Consideration of Welfare Exemption Claim

Bonfante Gardens, Inc., 217502  
1998-2002

Action: Upon motion of Mr. Leonard, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Chiang, Mr. Leonard and Ms. Mandel voting yes, the Board granted the petition in part as recommended by staff.

## PUBLIC COMMENT

Mr. Leo A. Tirado, Project Architect, Bonfante Gardens, Inc., expressed his appreciation to the Board for their vote today on the Bonfante Gardens Family Theme Park.

Chairwoman Migden requested that Closed Session be the last item on the agenda.

## ADMINISTRATIVE SESSION

### PROPOSED FIRST QUARTER 2004 BOARD WORKLOAD PLAN

Deborah Pellegrini, Chief, Board Proceedings Division, presented the proposed First Quarter 2004 Board Workload Plan (Exhibit 9.19).

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted the First Quarter 2004 Board Workload Plan as presented with the deletion of February 17 and March 11, 2003.

## OFFERS IN COMPROMISE RECOMMENDATIONS

Jennifer Willis, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Offers in Compromise Recommendations.

The Board deferred consideration of the following matter: *Samuel J. Burris*.

Upon motion of Mr. Parrish, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the *Offers in Compromise of Shon F. Nasir, Jr. and Peter J. and Maria Karabinis*.

Wednesday, September 24, 2003

#### ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Parrish, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 9.20).

Sondra Merson, Computer Operations Supervisor, Technology Services  
Division, Headquarters  
David J. Slechta, Supervising Tax Auditor III, West Covina District Office  
Marilyn C. Matisohn, Tax Technician III, West Covina District Office  
Sydney Van Cleave, Business Taxes Specialist I, San Jose District Office  
Bruce Wormell, Staff Information Systems Analyst, San Francisco District  
Office  
Betty Taylor, Assistant Information Systems Analyst, Change Management Unit,  
Technology Services Division, Headquarters  
Olivia Lopez Patno, Business Taxes Compliance Specialist, Special Procedures  
Section, Headquarters

Action: Approve the Board Meeting Minutes of May 28, July 9, July 25, August 6, and August 28, 2003.

Action: Adopt the 2004 Diesel Fuel Tax Rate for Interstate Users (AB 1269) as recommended by staff (Exhibit 9.21).

Action: Adopt the 2004 Hazardous Waste Fees and Occupational Lead Poisoning Prevention Fee as recommended by staff (Exhibit 9.22).

#### HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING

Raphael Ganon, 199150  
2002, \$347.50 Claim for Credit

For Claimant:

No Appearance

For Franchise Tax Board:

Dennis Haase, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether respondent properly denied appellant's claim for property tax assistance.

Action: Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Wednesday, September 24, 2003

**FINAL ACTION ON APPEALS HEARD SEPTEMBER 24, 2003**

Upon motion of Ms. Mandel, seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Ms. Migden and Mr. Chiang voting no, in the appeal of *Robert M. and Lois F. Ling, 133712*, the Board reverse the action of the Franchise Tax Board.

Upon motion of Ms. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, in the appeal of *Robert W. Abbott, 208993*, the Board sustained the action of the Franchise Tax Board.

Upon motion of Ms. Mandel, seconded by Ms. Migden and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, in the appeal of *Pradeep Batra, 192221*, the Board sustained the action of the Franchise Tax Board.

Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, in the appeal of *Hunt Systems, LLC, 205261*, the Board cancel the late-payment penalty, otherwise sustain the action of the Franchise Tax Board.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Ruth Scherfenberg, 186944

1999, \$266.00 Tax, \$100.00 Late Filing Penalty

For Appellant:

Appearance Waived

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has met her burden to prove error in the proposed assessment of tax and the late filing penalty.

Whether the Board has jurisdiction over appellant's appeal.

Whether appellant has been denied due process.

Action: Upon motion of Ms. Migden, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and imposed a \$1,000.00 frivolous appeal penalty.

Members requested that for Franchise Tax Board non-filer cases, in addition to the hearing summary, staff provide, in chart form, the taxpayer's history of non-filing with Franchise Tax Board and history of meritless Board of Equalization appeals.

Wednesday, September 24, 2003

**SALES AND USE TAX APPEALS HEARINGS**

Tahoe City Plaza, Inc., 160885

4-1-98 to 3-31-01, \$25,551.24 Tax

For Petitioner:

Appearance Waived

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the evidence shows that the claimed exempt sales of food products should be reduced by approximately 20 or 25 percent before the audited percentages of error are applied.

Action: Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**FINAL ACTION ON PETITIONS HEARD SEPTEMBER 24, 2003**

Upon motion of Ms. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that in the petition of *Lezah Jazzmens, Inc.*, 167420, the negligence penalty be cancelled, otherwise redetermined as recommended by the Appeals Division.

Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that in the petition of *Michael Wayne Austin, et al.*, 135313, 88432, the negligence penalty be cancelled, otherwise be redetermined as recommended by the Appeals Division.

Upon motion of Ms. Migden, seconded by Ms. Mandel and duly carried, Ms. Migden, Mr. Parrish, Mr. Chiang and Ms. Mandel voting yes, Mr. Leonard voting no, the Board ordered that the petition of *Kassabian Motors, Inc.*, 87623, be redetermined as recommended by the Appeals Division.

Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition of *Applied Process Cooling Corp.*, 113320, be redetermined as recommended by the Appeals Division.

Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition of *Amtek Computer Services, Inc.*, 128567, be redetermined as recommended by the Appeals Division.

**Wednesday, September 24, 2003**

**FINAL ACTION ON PETITIONS HEARD SEPTEMBER 24, 2003**

Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition of *MPower Communications Corporation (7724), 221745*, be denied.

Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition of *TCAST Communications, Corporation (7625), 214613*, be denied.

Upon motion of Mr. Parrish, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition of *PacWest Telecomm (2043), 224022*, be denied.

The Board recessed at 2:00 p.m. and reconvened at 2:06 p.m. with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

**ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 2:07 p.m. and reconvened immediately in closed session with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

**CLOSED SESSION**

The Board met to discuss settlements (Revenue and Taxation Code sections 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Govt. Code § 11126 (a)).

The Board recessed at 2:24 p.m. and reconvened immediately in open session with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

Timothy Boyer, Interim Executive Director, announced the appointment of Lisa Fien as Chief, Personnel Management Division.

Mr. Chiang adjourned the Board meeting at 2:25 p.m.  
in memory of Jule Boldizsar, Honorable Bill Leonard's father-in-law.

*The foregoing minutes are adopted by the Board on December 4, 2003.*

Note: The following case was removed from the calendar prior to the meeting: *Bill B. and Sandra L. Robinson, 203265*.